

Exhibit 23

REDACTED VERSION OF DOCUMENT SOUGHT TO BE FILED UNDER SEAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

MDL NO. 2843

CASE NO. 3:18-MD-02843-VC-JSC

HON. VINCE CHHABRIA

COURTROOM 4 – 17TH FLOOR

SPECIAL MASTER: DANIEL GARRIE ESQ.

**ORDER RE: FACEBOOK’S MOTION
FOR PROTECTIVE ORDER AGAINST
PRODUCTION OF API CALL LOGS**

JAMS REF. NO: 1200058674

INTRODUCTION

1. Pending before Special Master Garrie is Facebook’s Motion for a Protective Order Against Production of API Call Logs. Facebook seeks a protective order that the data in the two tables titled [REDACTED] (“Mobile Table”) and [REDACTED] (“Web Table”) is not reasonably accessible because of undue burden and cost and that Facebook is protected from producing them.

BACKGROUND

2. On May 6, 2020, Plaintiffs served their Third Set of Requests for Production in which they requested “all records or logs of API Calls made by Third Parties for the Content and Information of Friends of Installing Users.”¹ See Exhibit A (Third Set of Requests for Production) at 10.

3. Facebook uses APIs to allow Facebook’s users to be able to access their Facebook profiles and those of their friends from local devices using Facebook’s own apps (e.g., when a user pulls up their profile on a phone, the Facebook app calls Facebook’s central servers through APIs to access the photos, posts, and other information displayed on that profile). See Exhibit B (Ji Declaration) at ¶ 5. Facebook also uses APIs to allow third parties to connect with its servers to send or receive information (e.g., a website can connect to Facebook’s APIs to verify a user’s identity rather than requiring the user to create a specific account for that site). See id. at ¶ 6.

4. Facebook’s two [REDACTED] logs of API call activity are kept in two data tables: the Mobile Table, [REDACTED] [REDACTED]; and the Web Table, which logs API calls [REDACTED]

¹ API refers to “Application Programming Interface,” a standard industry programming tool that allow computers and computer programs to send information to each other. Each connection to an API is referred to as a “call.”

██████████. See Exhibit B at ¶¶ 8-9. The Mobile Table and Web Table reflect the number of calls made to the Facebook APIs ██████████

██████████.² The Mobile Table and Web Table do not contain data demonstrating whether data was returned in response to an API call, what the data that was returned may have been (if it was returned at all), or the volume of data that may have been returned (if it was transferred at all). Id. at ¶ 14.

5. Facebook preserves the Mobile Table and Web Table in “cold storage” in a highly compressed, non-readable format. Id. at ¶ 17. In cold storage, the data in the tables cannot be reviewed or analyzed. Id. at ¶ 18. Facebook maintains the Mobile Table from ██████████ and it contains approximately ██████████ of data in highly compressed form.³ See Exhibit C (Motion for Protective Order Against Production of API Call Logs) at 5. Facebook maintains the Web Table from ██████████ and it contains approximately ██████████ of data in highly compressed form. Id.

6. To analyze the data in the Mobile Table and Web Table, Facebook data scientists must first restore a partition of the data to “warm storage”—a more accessible form of data storage that makes the data readable. Id. at ¶¶ 20. Due to limitations on computing and server capacity, only a limited number of partitions can be restored and analyzed at any given time. Id. It takes about one day of processing to restore ██████████ of data from the Tables to warm storage. See id. at ¶ 18.

² The data fields included in the Mobile Table include ██████████p ██████████. See Exhibit A to Ji Declaration. The data fields in the Web Table include ██████████ See Exhibit C to Ji Declaration.

³ A petabyte is one million gigabytes.

7. Facebook data scientist Mengge Ji estimated it would take approximately four years of dedicated full-time work for her to restore one partition, run searches across that restored partition, and then repeat [REDACTED] not including the additional time it would take to export data for production. Id. at ¶ 35.

8. Facebook also maintains a smaller table called [REDACTED] (“Method Table”) that provides summary data [REDACTED] of API calls [REDACTED].⁴ Id. at ¶ 53.

9. On October 6, 2021, Special Master Daniel Garrie (“Special Master Garrie”) and Hon. Gail Andler (Ret.) declared impasse on the issue of whether Facebook is required to produce all API call log data.

10. On October 18, 2021, Facebook submitted its opening brief to Special Master Garrie on this issue. See Exhibit C. Facebook argues that (a) the Mobile Table and Web Table are not reasonably accessible because of undue burden and cost; and (b) Plaintiffs cannot show good cause for the production of the inaccessible Mobile Table and Web Table data because the Tables are outside the scope of discovery permitted by Rule 26(b)(1) and Facebook is willing to produce alternative sources of information about the content of API call logs. Id.

11. On October 28, 2021, Plaintiffs submitted their Opposition to Facebook’s Motion for a Protective Order to Stop Preserving Certain API Call Logs. See Exhibit D. Plaintiffs argue, among other things, that (a) Facebook fails to demonstrate good cause for entry of a protective order; and (b) Facebook fails to provide the information necessary to ascertain the benefits of

⁴ The data fields included in the Method Table are [REDACTED]. See Exhibit E to Ji Declaration.

preservation. Id. Plaintiffs also propose that Facebook provide additional information regarding the Mobile Table and Web Table to facilitate a targeted sampling of data from the Tables.

12. On November 2, 2021, Facebook submitted its Reply in Support of Motion for a Protective Order Against Production of API Call Logs. See Exhibit E. Facebook argues, among other things, that (a) Plaintiffs fail to show that the relevance, importance, or benefit of data from the Mobile and Web Tables outweighs the burden of production; (b) Plaintiffs’ proposed solution of sampling the Tables is unduly burdensome when balanced against the appropriate proportionality considerations and would yield only irrelevant data; and (c) Plaintiffs have not shown that the Method Table is an inadequate alternative to the Mobile and Web Tables.

FINDINGS

13. According to Rule 26(b)(2)(B):

A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C).

14. “In general, [ESI is] inaccessible [if it] ‘is not readily useable and must be restored to an accessible state before the data is usable.’” U.S. ex rel. Carter v. Bridgepoint Educ., Inc., 305 F.R.D. 225, 240 (S.D. Cal. 2015) (quoting Zubulake v. UBS Warburg LLC, 217 F.R.D. 309, 320 (S.D.N.Y. 2003)).

15. Special Master Garrie finds that the data in the Mobile Table and Web Table is not reasonably accessible because it is not readily usable in its “cold storage” state and must be restored to “warm storage” in order to be searched and analyzed (i.e. usable). See Exhibit B at ¶¶ 17-20. Special Master Garrie finds that the time and cost of restoring, analyzing, and producing the data

in the Mobile Table and Web Table would place an undue burden on Facebook when balanced against the appropriate proportionality considerations.

16. Moreover, Special Master Garrie finds that restoring the data in the Mobile Table and Web Table for the purpose of sampling, as Plaintiffs propose, would also place an undue burden on Facebook, balanced against the appropriate proportionality considerations, as it would require restoring the majority of partitions to warm storage, searching the partitions individually, and exporting a large volume of data. Id. at ¶ 19, 28, 35. This process would most likely take years to complete.

17. Special Master Garrie finds that Plaintiffs have not established good cause for producing data from the Mobile Table and Web Table because comparable data is available through the accessible Methods Table. Id. at ¶ 53. Moreover, Special Master Garrie finds that the Mobile Table and Web Table are not likely to yield relevant information regarding the sharing of user data with third parties because the Mobile Table and Web Table do not contain data demonstrating whether data was returned in response to an API call, what the data that was returned may have been (if it was returned at all), or the volume of data that may have been returned (if it was transferred at all). Id. at ¶ 14.

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ORDER

18. Facebook's motion for a protective order against producing API call log data from the Mobile Table and Web Table is granted.

19. No later than December 1, 2021, Facebook is to produce the data in the Methods Table.

IT IS SO ORDERED.

Monday, November 8, 2021

A handwritten signature in cursive script, appearing to read "Daniel B. Garrie", written over a horizontal line.

Daniel Garrie
Discovery Special Master